IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CRIMINAL REVISION PETITION NO. 1440/2006

SMT. ANITA & ORS. Vs. DHARAMRAJ

DATE: 14.03.2007.

HON'BLE MR. K.S. RATHORE, J.

Mr. Sanjay Sharma for the petitioners.
Mr. Sanjay Mehrishi for the respondent.

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R E P O R T A B L E

The instant criminal revision petition under Section 397 read with Section 125 Cr.P.C. is directed against the judgment dated 17.10.2006 passed by the Special Judge, SC/ST (Prevention of Atrocities Cases), Jhalawar in Criminal Revision No. 102/2005, whereby the criminal revision filed by the respondent-husband against the order dated 08.08.2005 passed by the Judicial Magistrate (First Class), Khanpur, District Jhalawar in Criminal Misc. Case No. 179/2003, has been allowed and the said order dated 08.08.2005 passed by the trial Court granting maintenance in favour of the petitioners has been reversed.

Brief facts of the case are that the petitioner No.1 Smt. Anita and respondent Dharamraj got

married in 'Samuhik Vivah Sammelan' at village Kanvas, District Kota and thus petitioner No.1 is legally wedded wife of the respondent Dharamraj and out of their wedlock, petitioner Nos. 2 and 3 Kaushal and Pradeep born. She was living with the respondent quite happily and was performing her domestic duties, but after some time the respondent and his family members started demand of dowry and she was physically and mentally tortured and harassed and was not provided food and clothes. In the month of January, 2003 the petitioner No.1 was threatened and thrown away from the house by the respondent-husband. It is also alleged that the respondent has remarried with Badri Bai in July, 2003 without taking divorce from the petitioner No.1 by way of NATA marriage. Since then the petitioner and her minor sons are living with her parents and she is not having any source of income for herself or for her minor sons and, therefore, she filed an application under Section 125 Cr.P.C. before the Court of Judicial Magistrate, Khanpur for maintenance.

The trial Court vide its judgment dated 08.08.2005, allowed the application moved by the petitioners under Section 125 Cr.P.C. and granted maintenance of Rs. 700/- per month in favour of the petitioner No.1 Smt. Anita, the wife of the respondent-

husband and Rs. 500/- per month each in favour of the petitioner Nos. 2 and 3, minor sons of the respondent

Aggrieving and dissatisfying with the said judgment of the trial Court dated 08.08.2005, the respondent-husband preferred criminal revision before the Court of Special Judge SC/ST (Prevention of Atrocities) Cases, Jhalawar under Section 397 Cr.P.C. and the Revisional Court having considered each and every aspect has observed that since the petitioner-wife is living separately at her own will, therefore, as per the provisions of Section 125 Cr.P.C., she is not entitled to receive any maintenance. It is also observed by the Revisional Court that second marriage by way of 'Nata' is not proved by the petitioner and therefore, the criminal revision filed by the respondent-husband has been allowed and the order of the trial Court dated 08.08.2005 has been quashed and set-aside vide judgment dated 17.10.2006.

Against the said judgment of the Revisional Court dated 17.10.2006, the petitioners have preferred this revision petition on the ground that the Revisional Court has not correctly appreciate the evidence and the circumstances of the case as the evidence adduced before the trial Court clearly indicates that second marriage by way of 'Nata' is

performed by the respondent and further the Revisional Court also not care to see the prima-facie fact that the petitioner-wife was living peacefully with her husband but she was forced to leave the matrimonial house and is not living separately at her own will. Therefore, the judgment passed by the Revisional Court dated 17.10.2006 deserves to be quashed and set-aside.

Per contra, learned counsel appearing for the respondent-husband submits that the Revisional Court has rightly appreciated the provisions of Section 125 Cr.P.C.. He referred Section 125 Cr.P.C. and ingredients of which are essentially required to be fulfilled for getting maintenance, more particularly he referred sub-section (4) of Section 125 Cr.P.C. according to which, no wife shall be entitled to receive an [allowance for the maintenance or the interim maintenance and expenses of proceedings, as the case may be,] from her husband under this section if she is living in adultery, or if, without any sufficient reason, she refuses to live with her husband, or if they are living separately by mutual consent.

After referring sub-section (4) of Section 125 Cr.P.C., the learned counsel for the respondent further submits that since the petitioner-wife is living

separately at her own will and refused to live with her husband, therefore, as per the provisions of Section 125 Cr.P.C., she is not entitled to receive any maintenance.

He further submits that the petitioner-wife also failed to prove the factum of remarriage. He also referred the observations made by the Revisional Court and the Revisional Court also observed that the factum of remarriage is not established and burden of proof lies with the petitioner. Thus, there was no sufficient reason to live separately from her husband and the Revisional Court after appreciating the evidence available on record, has rightly passed the judgment dated 17.10.2006 quashing and setting aside the judgment of the trial Court dated 08.08.2005.

Learned counsel for the petitioners submits that the petitioner-wife never refused to live with her husband and she is not living separately at her own will, on the contrary he submits that the respondent-husband has remarried by way of 'Nata' and also having a daughter out of second marriage.

In support of his submissions, the learned counsel for the petitioners placed reliance on the judgment rendered by the Hon'ble Supreme Court in the

case of **Rajathi Vs. C. Ganesan, reported in (1999)6 SCC 326,** wherein the Hon'ble Supreme Court has observed that wife is entitled to live separately and claim maintenance even if she failed to prove her allegation of second marriage by the husband under section 494 IPC.

I have gone through the judgment passed by the trial Court dated 08.08.2005. The trial Court has examined this aspect whether the husband is having sufficient means to provide maintenance or not, and to this effect the trial Court has arrived at a conclusion that the husband of the petitioner is having 30 Bighas of land, two tube wells, one tractor, house and is earning Rs. 5-6 lacs yearly.

Having considered these aspects, the trial Court also observed that the petitioner-wife is able to prove the factum of second marriage by way of 'Nata' with Badri Bai and the evidence adduced on behalf of the respondent-husband is not clear in that aspect. Further witness Latoor Lal in its cross-examination submits that he is not aware of the fact of remarriage by respondent Dharamraj although he is closely related to him. The trial Court has also observed that the petitioner in its pleadings in the application under

Section 125 Cr.P.C. has clearly mentioned that the husband of the petitioner has remarried with Badri Bai, though he denied this fact in reply to the application and the trial Court also found that since the husband of the petitioner has remarried, it is sufficient reason that she can live separately.

As per the provisions of sub-section (4) of Section 125 Cr.P.C., wife is not entitled to receive maintenance from her husband under this Section if she is living in adultery or if, without any sufficient reason, she refuses to live with her husband and it is not a case in the instant case and since the husband has remarried, therefore, this is sufficient reason for the wife to live separately and the trial Court after appreciating the evidence, has rightly held that remarriage factum is sufficient reason to live separately and as held by the Hon'ble Sureme Court in the aforementioned case of **Rajathi Vs. C. Ganesan,** even if the petitioner-wife failed to prove her allegation of second marriage by the husband, she is entitled to claim maintenance.

Thus, the Revisional Court has not only seriously erred to appreciate the provisions of Section 125 Cr.P.C., but also not carefully applied the

provisions in the instant case. Further the impugned order passed by the Revisional Court dated 17.10.2006 is contrary to the ratio decided by the Hon'ble Supreme Court in the aforementioned case of **Rajathi (supra)** and the Revisional Court has committed serious error. It is a fit case where interference with the Revisional Court's judgment dated 17.10.2006 is required by this Court while exercising revisionary powers.

Consequently, the judgment dated 17.10.2006 passed by the Revisional Court, being contrary to the settled preposition of law and contrary to the facts and circumstances of the case, deserves to be quashed and set-aside and the same is hereby quashed and set-aside and the order dated 08.08.2005 passed by the trial Court is hereby upheld, by which maintenance of Rs. 700/- per month has been granted in favour of the petitioner-wife and Rs. 500/- per month each has been granted in favour of the petitioner Nos. 2 and 3, sons of the respondent.

The revision petition stands allowed.

(K.S. RATHORE),J.

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